No. 80-2164

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

RUSSELL G. SCHLENZ and NANCY A. SCHLENZ,
Lake County, Illinois Appellants,

and

GERTRUDE ANDERSON and
1300 CONSOLIDATED CASES,
Shelby County, Illinois Appellants,

v.

JOHN W. CASTLE, ROBERT JASPER, THE LAKE COUNTY, ILLINOIS, BOARD OF REVIEW, SHELBY COUNTY, ILLINOIS and the ILLINOIS PROPERTY TAX APPEAL BOARD,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

MOTION TO DISMISS PURSUANT TO RULE 16

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MOTION

Now come the Appellees, Robert G. Jasper, the Lake County, Illinois, Supervisor of Assessments, and the Lake County, Illinois, Board of Review, by their attorney Fred L. Foreman, State's Attorney of Lake County, Illinois, through his assistant, Robert J. Masini, and respectfully request this Honorable Court to dismiss the appeal of the instant action which involves the appeal of a decision of the Illinois Supreme Court on the ground that this case does not present a substantial federal question.

CONSTITUTIONAL AND STATUTORY PROVISIONS

CONSTITUTION OF THE UNITED STATES

AMENDMENT 14

Already set forth at page 3 of Appellants' Jurisdictional Statement.

ILLINOIS REVISED STATUTES

Statute Challenged

Ch. 120, par. 799.1 (Revenue Act of 1939, § 318.1) (1978)

Already set forth at page 4 of Appellants' Jurisdictional Statement.

Publication Of Assessment Lists

Ch. 120, par. 584 (Revenue Act § 103) (1977)

Already set forth at Appendix F, pages A-31 and A-32 of Appellants' Jurisdictional Statement.

Property Tax Appeal Board

Ch. 120, pars. 592.1 to 592.5 (Revenue Act §111.1 to 111.5) (1977)

Already set forth at Appendix F, pages A-35 to A-38 of Appellants' Jurisdictional Statement.

Local Board Of Review

Ch. 120, par. 589 (Revenue Act § 108) (1977)

(Appendix p. 2a)

Payment Under Protest

Ch. 120, par. 675 (Revenue Act § 194) (1977)

(Appendix p. 7a)

Tax Objections

Ch. 120, par. 716 (Revenue Act § 235) (1977)

(Appendix p. 11a)

Prior Validation Act

Ch. 120, par. 823 (1957)
repealed 1965

(Appendix p. 1a)

FACTUAL BASIS FOR THE MOTION

In January, 1978, the Illinois Supreme Court decided the unrelated case of *Andrews* v. *Foxworthy,* 72 Ill. 2d 13, 373 N. E. 2d 1332, wherein the court held that the publication dates contained in Ill. Rev. Stat., Ch. 120, par. 584 (1977) for increased real property assessments in non-quadrennial years were a mandatory requirement on local assessment officials. *Andrews* was the final adjudication of objections filed by numerous Vermillion County, Illinois taxpayers with regard to their 1974 real property assessments pursuant to the Illinois statutory scheme for contesting real property assessments[1].

The court based its holding in *Andrews* on its 1954 decision *People* v. *Jennings,* 3 Ill. 2d 125, 119 N. E. 2d 781 which involved a total failure to publish rather than tardy publication as had occurred in *Andrews.*

On November 30, 1978, Public Act 80-1471 which added Ill. Rev. Stat., Ch. 120, par 799.1 to the Illinois Revenue Act of 1939, became law. Public Act 80-1471 validated all assessments of real and personal property for purposes of taxation notwithstanding the fact that publication of the assessments was late.

In early 1955, the Illinois General Assembly had responded to the *Jennings* decision by enacting Ill. Rev. Stat., Ch. 120, par 823 (1957) repealed 1965, which validated all 1954 and earlier real and personal property assessments which had not been published. The constitutionality of the 1955 curative act was challenged and upheld in *People* v. *Holmstrom,* 8 Ill. 2d 401, 134 N. E. 2d 246 *appeal d'm'd* 352 U. S. 938 (1956).

The case at bar involves the constitutionality of the present validation legislation, Ill. Rev. Stat., Ch. 120, par. 799.1 (1978).

The Lake County plaintiffs filed their action in March of 1978. The complaint, as amended, ran on for over fifty pages

[1] Ill. Rev. Stat., Ch. 120, pars. 675 & 716 (1977).

seeking equitable and declaratory relief involving numerous matters not relevant to this proceeding. In December, 1978, some two weeks after the enactment of Public Act 80-1471, plaintiffs filed a motion for partial summary judgment based on the holding in *Andrews* that sought a refund of that part of their 1977 real property taxes attributable to tardily published assessment increases. The trial court denied that motion based on its view that Public Act 80-1471 was constitutionally valid. The appeal of that trial court decision and the legal issue regarding the constitutionality of Public Act 80-1471 are the subject of plaintiffs' present appeal to this Court.

The Shelby County case has its origins in a 1974 order sent by the State of Illinois Department of Local Government Affairs to Shelby County ordering a mass reassessment of all real estate in the county for the purpose of equalizing assessments at the statutorily mandated level. The county hired a private appraisal firm which performed its work in 1975 and 1976. By mid-1976 it became apparent to the Shelby County Supervisor of Assessments that the new assessment figures would not be available by the publication date. She requested an opinion from the Department asking whether the publication date was directory or mandatory. The Department issued an opinion that the date was directory. At that time the *Andrews* case was still pending in the trial court in Vermillion County. The Supervisor waited until the new assessments were prepared and made her 1976 assessment publication after the statutory deadline.

After the publication over 3,500 taxpayers filed complaints with the Shelby County Board of Review pursuant to Ill. Rev. Stat., Ch. 120, par. 589(4) (1977) to obtain a review of the correctness of their new assessments. An individual hearing was held in each case. Over 1,600 appeals were taken from Shelby County Board of Review decisions to the State Property Tax Appeal Board. The 1300 consolidated cases involved in the case at bar were consolidated from those appealed to the Property Tax Appeal Board.

The Property Tax Appeal Board held a mass hearing in April, 1978, after the decision in *Andrews*, and for the first time the taxpayers' attorneys presented the legal argument concerning late publication. The Property Tax Appeal Board ruled for the taxpayers on the issue of late publication. The Shelby County State's Attorney filed a complaint for administrative review of that decision in the circuit court in September, 1978. It is that lawsuit, which shortly thereafter became involved with the issue of the constitutionality of Public Act 80-1471, which is the subject of the present appeal to this Court.

In both the 1976 and 1977 tax years all taxpayers in Lake and Shelby Counties, as well as all other taxpayers throughout Illinois, had the opportunity to receive a hearing to have the correctness of their real property assessments reviewed by the local board of review regardless of whether the publication of their assessments was timely or not. Illinois law provided for a review of real property assessments by the local county board of review upon the filing of a complaint within 20 days after the publication of each township's assessments. Ill. Rev. Stat., Ch. 120, par. 589(4) (1977). This right was not affected by tardy publication because in each case the board of review remained open after the publication for the hearing of complaints.

If a property owner was dissatisfied with the decision of the local board he could appeal that decision to the State Property Tax Appeal Board, Ill. Rev. Stat., Ch. 120, pars. 592.1-592.5 (1977), as the Shelby County taxpayers did in the case at bar, or later, when the taxes became due, pay them under protest and file a tax objection. Ill. Rev. Stat., Ch. 120, pars. 675 and 716 (1977).

In the case at bar the Lake County plaintiffs did not avail themselves of their opportunity to have the correctness of their assessment reviewed through the available procedure. The Shelby County plaintiffs did seek review and after this appeal is disposed of the correctness of their 1976 assessments will still have to be reviewed by the Property Tax Appeal Board.

The Illinois Supreme Court consolidated the appeals of the Lake County and Shelby County cases because the identical legal issue was involved in both. The two cases, as consolidated, have been appealed by the plaintiffs to this Court in the present appeal.

ARGUMENT

I.

THERE HAS BEEN NO VIOLATION OF THE APPELLANT TAXPAYERS' FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS.

There is no substantial federal question presented in the case at bar. The plaintiffs' belief that such a question exists stems from their misunderstanding of this Court's *Forbes Pioneer Boat Line* v. *Board of Commissioners,* 258 U. S. 338 (1922) and *Ettor* v. *City of Tacoma,* 228 U. S. 148 (1913) decisions and the recent Maryland Court of Appeals decision in *Washington National Arena Limited Partnership* v. *Treasurer, Prince George's County,* 410 A. 2d 1060 (Md. 1980) cert. denied ____ U. S. ____, 66 L. Ed. 2d 40 (1980). The line of cases which is controlling in the present case is *United States* v. *Heinszen & Co.,* 206 U. S. 370 (1907), *Rafferty* v. *Smith, Bell & Co. Limited,* 257 U. S. 226 (1921) and *Graham* v. *Goodcell,* 282 U. S. 409 (1931). These decisions very plainly dictate that no constitutional violation occurred in the case at bar.

Plaintiffs' contention that a vested right possessed by them were obliterated by the passage of the challenged statute, Public Act 80-1471, is supported by the totally erroneous foundation that they somehow acquired a vested right from the *Andrews* decision, a case in which they were not parties. The plaintiffs did not acquire a vested right at the time of the *Andrews* decision, but rather they obtained a mere legal expectancy.

The *Andrews* case involved a decision regarding the 1974 tax objections of certain Vermillion County taxpayers.[2] The Lake County plaintiffs have arrived at this Court via the appeal of a denial of a motion for partial summary judgment regarding

[2] The Vermillion taxpayers had filed tax objections involving their 1974 real property tax assessments pursuant to the Illinois statutory scheme Ill. Rev. Stat., Ch. 120, pars. 675 and 716 (1977).

their 1977 real property assessment filed in a multi-facted chancery case. In fact, the Lake County plaintiffs did not ever seek to have the correctness of their 1977 property assessment directly reviewed through the available administrative remedy.

The Shelby County case is here on the appeal of an administrative agency's decision regarding the legal issue of tardy publication. When this Court finally terminates the appeals process by dismissing this appeal each of the Shelby County plaintiffs will have the correctness of their individual assessments reviewed by the agency.

The foregoing illustrates the fact that none of the plaintiffs in these consolidated cases have been prejudiced or injured in any way by either the late publication of assessments or the enactment of the validation legislation. All of the assessments which were required to be published in each year in each of the counties were, in fact, published. The plaintiffs, as well as every other Illinois taxpayer, had avenues open to them at all times in each of the years to obtain a review of the correctness of their assessments no matter when the publication occurred.

It has long been the rule in the area of civil legislation, as opposed to the prohibitions against *ex post facto* laws in the criminal area, that there is no vested right in the continuation of a particular statutory enactment so long as there is no impairment of contractual obligations. *Watson* v. *Mercer,* 33 U. S. (8 Pet.) 88, 110 (1834). This principle was well-stated by the Illinois Supreme Court in *People ex rel. Eitel* v. *Lindheimer,* 371 Ill. 367, 21 N. E. 2d 318 *appeal d'm'd sub nom. Illinois ex rel. Eitel* v. *Toman,* 308 U. S. 505 (1939):

> That the legislature cannot pass a retrospective law impairing the obligation of a contract, nor deprive a citizen of a vested right, is a principle of general jurisprudence, but a right, to be within its protection, must be a vested right. It must be something more than a mere expectation based upon an anticipated continuance of the existing law. *Lindheimer,* at 321.

This Court has held in situations which involve taxation matters that the suit is for the enforcement of a public right and the litigant's interest as a taxpayer is only incidental. *Hodges* v. *Snyder,* 261 U. S. 600 at 603-604 (1923); *Rafferty,* 257 U. S. at 232.

This Court has also held that where the law is changed while a case is on appeal the reviewing court must dispose of the case under the law as it then exists and not as it was when the decision was made by the lower court. *South Carolina* v. *Gaillard,* 101 U. S. 433 (1879).

In *Washington National Arena,* at pages 1065 through 1069, the Maryland Court of Appeals provides a very good discussion of the two sides of the issue involved in the case at bar. The Maryland Court started by pointing out that:

> With respect to legislation imposing taxes or other governmental charges, which is retroactive to prior years, and which purports to correct defects in the collecting authority for those prior years, the line between permissible "curative" legislation and unconstitutionally retroactive legislation has been somewhat difficult to draw. The two leading Supreme Court cases which illustrate each side of that line are *United States* v. *Heinszen,* 206 U. S. 370, 27 S. Ct. 742, 51 L. Ed. 1098 (1907), and *Forbes Pioneer Boat Line* v. *Board of Commissioners,* 258 U. S. 338, 42 S. Ct. 325, 66 L. Ed. 647 (1922). *Washington National Arena* at 1065.

The *Forbes* and *Washington National Arena* line of cases which are mistakenly relied on by the plaintiffs deal with situations in which a legislative body attempted to retroactively change the legislative policy involved in the particular case to create the authority to impose a charge where no authority had previously existed.

In *Forbes* the Florida Supreme Court had decided that the Board of Commissioners had never been empowered to collect tolls for canal passage. The Florida Legislature then gave that power to the Commission and also attempted to ratify the

earlier collections by providing for the legalization and validation of previously collected tolls. This Court struck that part of the law pointing out that since it had been decided that no collection authority existed prior to the instant action of the Florida Legislature the authority could not be retroactively created. *Forbes,* at 339.

Likewise, in *Washington National Arena* the Maryland Legislature had only authorized a maximum recordation tax rate of $1.10 for Prince George's County and the Maryland Court of Appeals had finally construed that to be the legislative policy. When the Maryland Legislature later tried to retroactively increase that authority for Prince George's County to $1.65 the Court found that such authority could not be created retroactively. *Washington National Arena,* at 1069.

The case at bar does not involve the authority of Illinois assessment officials to assess property. That power has lawfully existed at all times relevant to this litigation and it has not been challenged. The issue in this case is similar to that in the *Heinszen* line of cases which involves a type of defect in authority which is often referred to as a "technical" defect, rather than an attempt to retroactively create authority where it had not previously existed. This case involves only the subsidiary act of timely publication of assessment lists. It is important that this Court distinguish, as it has done in the *Heinszen* line of cases and as the Illinois Supreme Court has done in this case, between those acts which although mandatory in the sense of "being required" are nevertheless, subsidiary to the exercise of the power and therefore may be retrospectively waived by the legislature, and those acts which are so fundamental to the exercise of power that retrospective waiver can not be done constitutionally. When this distinction is made it becomes readily apparent that the case at bar presents no substantial federal question.

The *Heinszen* case involved the collection of tariff duties by the United States on goods coming into the Philippines at the time immediately following the Spanish-American War. Based on several cases decided by this Court between March, 1902, and June 1906, it was held that the authority to collect the tariffs came from the President prior to the ratification of the peace treaty (April, 1899) and from Congress thereafter. However, tariffs were collected at all times even though Congress did not act to impose them until March, 1902. Consequently, although Congress possessed the power to enforce a duty at all times, there was a gap in the existence of a tariff act from April, 1899, until March, 1902.

Various suits for refunds were filed and in at least two cases which reached this Court refunds were upheld. *Lincoln* v. *United States* and *Warner B. & Co.* v. *United States,* 197 U. S. 419 (1905) *rehearing,* 202 U. S. 484 (1906). In June, 1906, one month after the *Lincoln* and *Warner B. & Co.* cases were decided Congress passed an act validating all tariffs collected during the period April, 1899, to March 1902.

The plaintiffs in the case at bar are in a situation identical to that of the *Heinszen* plaintiffs. Both sets of plaintiffs filed their actions before the passage of the validation legislation and both could point to other plaintiffs who had received relief prior to the enactment of the validation legislation.

In *Heinszen* this Court held that the challenged validation legislation was constitutional. The opinion of Mr. Justice White analogized the situation to the fundamental principle in agency law whereby a principal may retroactively ratify and validate the act of an agent, unauthorized at the time performed, but where the principal's capacity to grant the power exercised by the agent had always been in existence. *Heinszen,* at 382.

The *Heinszen* case involved several different legal arguments dealing with the ratification of the tariff duties and the effect of the validation legislation on pending lawsuits. In every instance this Court held in favor of the constitutionality of the

statute. Concerning the broad power of legislatures to validate various acts Mr. Justice White quoted from *Mattingly* v. *District of Columbia,* 97 U. S. 687 (1878), which involved the validation by Congress of certain void assessments for street improvements:

> If Congress or the legislative assembly had the power to commit to the board the duty of making the improvements, and (the power) to prescribe that the assessments should be made in the manner in which they were made, it had the power to ratify the acts which it might have authorized. * * * It may therefore cure irregularities, and confirm proceeding which, without the confirmation, would be void, because unauthorized, provided such confirmation does not interfere with intervening rights. *Heinszen,* at 384 quoting from *Mattingly,* at 690.

In addressing himself to the taxpayers' arguments that they had obtained a vested right by having filed their refund suits before the enactment of the ratifying statute Mr. Justice White cited Cooley's Constitutional Limitations (7th ed. p. 543):

> Nor is it important, in any of the cases to which we have referred, that the legislative act which cures the irregularity, defect, or want of original authority, was passed after suit brought, in which such irregularity or defect became matter of importance. The bringing of suit vests in a party no right to a particular decision (citations omitted) and his case must be determined on the law as it stands, not when the suit was brought, but when the judgment is rendered. (citations omitted). *Heinszen* at 386.

In a later case in the *Heinszen* line Mr. Chief Justice Hughes made a statement which clearly indicates that the validation statute in the present case presents no constitutional violation. The Chief Justice said:

> It is apparent, as the result of the decisions, that a distinction is made between a bare attempt of the legislature retroactively to create liabilities for transactions which, fully consummated in the past, are deemed to leave no ground for legislative intervention, and the case of a

> curative statute aptly designed to remedy mistakes and defects in the administration of government where the remedy can be applied without injustice. Where the asserted vested right, not being linked to any substantial equity, arises from the mistake of officers purporting to administer the law in the name of the Government, the legislature is not prevented from curing the defect in administration simply because the effect may be to destroy causes of action which would otherwise exist. *Graham* v. *Goodcell,* 282 U. S. 409 at 429.

Upon the completion of an analysis of the present situation under the law as established by the *Heinszen* line of cases it is obvious that no violation of the plaintiffs' Fourteenth Amendment Due Process rights occurred with the enactment of Public Act 80-1471. Therefore, the movants respectfully request that this Honorable Court dismiss this appeal.

II.

THERE HAS BEEN NO VIOLATION OF THE APPELLANT TAXPAYERS' FOURTEENTH AMENDMENT RIGHTS TO EQUAL PROTECTION.

There is also no substantial federal question presented in the case at bar by the plaintiffs' allegations of violations of their Fourteenth Amendment Equal Protection rights. The plaintiffs' claims that they are entitled to tax refunds after the effective date of the curative legislation simply because the *Andrews* taxpayers became entitled to refunds before the enactment of the curative act are totally meritless.

The question of the *Andrews* taxpayers' right to refunds on their 1974 taxes was finally decided by the Illinois Supreme Court in January of 1978[3], ten months before the curative legislation was enacted in November, 1978. At the time the

[3] *Neubert* v. *Foxworthy,* 71 Ill. App. 3d 438, 389 N. E. 2d 898 (4th Dist. 1979) cited by plaintiffs merely involved the unsuccessful attempt by the *Andrews* taxpayers to obtain interest on the refunds which had been finally adjudicated in January, 1978.

curative act became law the Lake County plaintiffs had not yet filed their motion for partial summary judgment with the Lake County Circuit Court and the case involving the Shelby County plaintiffs was pending before that circuit court in an administrative review action.

The fundamental problem with plaintiffs' argument is that Public Act 80-1471 does not treat similarly situated individuals in a different or discriminatory manner. They have cited no cases dealing with the question of whether the Equal Protection Clause is violated by an act of a legislature proporting to validate official acts as to which one or more non-fundamental associated functions were neglected to be performed, and we are unaware of any such cases. A legislative change will frequently result in similarly situated individuals having variant legal options, and the passage of a curative or validating act would always seem to have such an effect. It requires a strained interpretation of the Equal Protection Clause to conceptualize such "classification" as being within the purview of "equal protection". This position is firmly supported by this Court's decision in *Heinszen* which is factually indistinguishable from the case at bar.

The applicable principles in this area of the law are very familiar and have been often-times stated by this Court. In *Allied Stores of Ohio* v. *Bowers,* 358 U. S. 522 (1959) this Court said:

> The States have a very wide discretion in the laying of their taxes. * * * Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality prohibiting flexibility and variety that are appropriate to reasonable schemes of state taxation. *Allied Stores,* at 526.

In *Lehnhausen* v. *Lake Shore Auto Parts, Co.,* 410 U. S. 356 (1973) this Court said, "Where taxation is concerned and no specific federal right, apart from equal protection, is impe-

riled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." *Lehnhausen* at 359.

An equal protection argument very similar to that of the plaintiffs was rejected by the Pennsylvania courts in *Fisher Controls Co.* v. *Pennsylvania,* 354 A. 2d 920 (Pa. Comm. Ct. 1976), *aff'd,* 381 A. 2d 1253 (1977). In *Fisher Controls* the taxpayer, a Pennsylvania corporation, attacked a retroactive increase in the Pennsylvania corporate net income tax from 7% to 12%. The taxpayer argued that forcing it to pay the higher rate violated the uniformity clause of the Pennsylvania Constitution and the Equal Protection Clause of the Fourteenth Amendment since certain corporations, which had gone out of business and had received tax clearance certificates prior to the passage of the retroactive tax increase, were not subject to the additional tax.

The court rejected the equal protection claim saying:

> Retroactive provisions of a taxing statute increasing the rate of tax cannot reach a taxpayer whose tax liability was lawfully settled and paid before the enactment of the statute increasing the rate. There is no want of uniformity in not applying retroactive provisions of a tax rate increase to those it cannot reach. *Fisher Controls,* 354 A. 2d at 924.

Likewise, the alleged equal protection discrimination asserted in the instant case which is between those taxpayers whose liabilities have been settled before the enactment of Public Act 80-1471 and those whose liabilities are yet to be determined is also without merit.

Therefore, because there is no substantial federal question presented by plaintiffs' equal protection claims movants respectfully request this Honorable Court to dismiss this appeal.

CONCLUSION

The present appeal does not present any substantial federal questions for this Court's consideration. For the reasons stated in the foregoing Motion and Argument appellees request this Honorable Court to grant their Motion and dismiss the appellants' appeal of the decision of the Supreme Court of Illinois.

Respectfully submitted,

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APPENDIX

APPENDIX

RELEVANT ILLINOIS STATUTES

Illinois Revised Statutes, Ch. 120 (1957)

VALIDATION

AN ACT to legalize and validate tax assessments made during the year 1954 and all years prior thereto and to make legal and valid the collection of taxes based on such assessments. Approved May 21, 1955. L. 1955, p. 175.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

823. Validation of tax assessments made in 1954 and prior years and tax collections based thereon.] § 1. In all cases where real or personal property has been assessed for the purpose of taxation during the year 1954 and all years prior thereto as provided in the "Revenue Act of 1939", filed May 17, 1939,[1] as amended, except that no publication of the assessment of real or personal property, or both, was made as provided by Section 103 or 104 of said Revenue Act of 1939,[2] such assessments of real or personal property, or both, are hereby validated for all purposes of taxation notwithstanding that the publication of the assessments of real or personal property, or both, was not made as provided by statute. The extension of taxes on such real or personal property assessments, or both, are made legal and valid for the purpose of collection of taxes notwithstanding that the publication of real or personal property assessments, or both, was not made as provided by statute.

[1] Sections 482-811 of this chapter.

[2] Sections 584, 585 of this chapter.

Illinois Revised Statutes, Ch. 120 (1977)

589. Powers and duties of board of review.] § 108. In counties containing less than 1,000,000 inhabitants, the board of review shall, in any year, whether the year of the quadrennial assessment or not:

(1) Assess all property subject to assessment which shall not have been assessed by the assessor, and list and assess all property real or personal that may have been omitted in the assessment of any year or number of years, or if the tax thereon, for which such property was liable, from any cause has not been paid, or if any such property, by reason of defective description or assessment thereof, shall fail to pay taxes for any year or years, in either case the same when discovered shall be listed and assessed by the board in its revision of assessments, and the board may make such alteration in the description of real or personal property as it shall deem necessary.

(2) No such charge for tax of previous years shall be made against any property prior to the date of ownership of the person owning such property at the time the liability for such omitted tax was ascertained. Ownership as used in this Section shall be held to refer to bona fide legal and equitable titles or interests acquired for value and without notice of the tax, as may appear by deed, deed of trust, mortgage, certificate of purchase or sale or other form of contact. No such charge for tax of previous years shall be made against any real property if (a) the real property was last assessed as unimproved, (b) the owner of such property gave notice of subsequent improvements and requested a reassessment as required by Section 27a of this Act,[1] and (c) reassessment of the real property was not made within the 16 month period immediately following the receipt of that notice. Provided, that an assessment of real or personal property omitted from taxation by a decedent during his lifetime, shall be made against such property and be assessed in the name of the personal representative as executor,

[1] Chapter 120, § 508a.

administrator or trustee of such decedent's estate. The owner of real or personal property, and the executor, administrator or trustee of a decedent, whose property may have been omitted in the assessment in any year or number of years, or on which a tax for which such property was liable, has not been paid, and the several taxing bodies interested therein, shall be given at least 5 days notice in writing by the board, of the hearing on the proposed assessment of such omitted property, and the board shall have the full power to examine the owner, or the executor, administrator, trustee, legatee or heir of such decedent or other person touching the ownership, kind, character, amount and the value of such omitted property or credits.

(3) If the board shall determine that the property of any decedent was omitted from assessment during any year or number of years or that a tax for which such property was liable has not been paid, it shall be the duty of the board to give written notice to the executor, administrator or trustee of such decedent of the assessments made against such property and the amount thereof, and thereupon it shall be the duty of such executor, administrator or trustee to retain in his or their hands sufficient of the assets of such decedent's estate to pay the tax when extended on such assessment, and it shall be the duty of the county clerk to file in the circuit court, a copy of such assessment, together with the rate of taxation thereon certified by such county clerk, and upon the filing of such certificate, the court shall enter an order directing such executor, administrator or trustee to deposit with the clerk of the court or to sequester sufficient of the assets of the estate to pay the taxes on such assessments when extended as now provided by law, or to enter into bond in double the amount of such tax with securities to be approved by the court conditioned for the payment of the tax when so extended; and when so extended by the county clerk the full amount of such tax shall be a claim of the first class against such estate. However, an assessment of omitted property by the board of review in the manner provided in this Act shall not be subject to review by any succeeding board.

For the purpose of enforcing the provisions of this Act, the several taxing bodies interested therein are hereby empowered to employ counsel to appear before the board and take all necessary steps to enforce the assessment on such omitted property.

(4) On complaint in writing that any property described in such complaint is incorrectly assessed, the board shall review the assessment, and correct it, as shall appear to be just. Such complaint to affect the assessment for the current year shall be filed on or before the first day of August in counties with less than 150,000 inhabitants and on or before the first day of September in counties with 150,000 or more but less than 1,000,000 inhabitants: Provided, that if the assessment books containing the assessment complained of are not filed with the board of review by the 10th day of July in a county with less than 150,000 inhabitants or by the 10th day of August in a county with 150,000 or more but less than 1,000,000 inhabitants, then such complaint shall be filed on or before 20 calendar days after the date of publication of the assessment list pursuant to Section 103 of this Act.[2] The board may also of its own motion, at any time before its revision of the assessments is completed in every year, increase, reduce or otherwise adjust the assessment of any individual or corporation, on real property or personalty, making changes in the valuation thereof as may be just, and shall have full power over the assessment of any individual or corporation, and may do anything in regard thereto that it may deem necessary to make a just assessment; but no assessment shall be increased until the person or corporation to be affected shall have been notified, and given an opportunity to be heard, except as hereinafter provided; and before making any reduction in assessments of its own motion, the board of review shall give notice to the board of assessors, assessor or supervisor of assessments which certified the assessment, and give such assessor or supervisor of assessments an

[2] Chapter 120, § 584.

opportunity to be heard thereon. All complaints of errors in assessments, real or personal, shall be in writing, and shall be filed by the complaining party with the board of review, in duplicate, and the duplicate shall be forthwith filed by the board of review with the board of assessors, assessor or supervisor of assessments certifying such assessment. Complaints relating to real estate shall be classified by towns or taxing districts by the clerk of the board of review, and complaints relating to personal property shall be classified in such manner as the board of review shall determine by order for that purpose, duly entered of record; all classes of complaints shall be docketed numerically, each in its own class, in the order in which they shall be presented as near as may be, in books kept for that purpose, which books shall always be open to public inspection. Complaints relating to real estate shall be considered by towns or taxing districts and complaints relating to personal property shall be heard in their order by classes, in pursuance of the order of the board heretofore mentioned, until all complaints have been heard and passed upon by the board.

(5) Increase or reduce the entire assessment of either real or personal property, or both, or of any class included therein if, in its opinion, the assessment has not been made upon the proper basis, or equalize the assessment of real or personal property, by increasing or reducing the amount thereof, in any township, or part thereof, or any portion of the county as may, in its opinion, be just, but the assessment of any class of property or of any township or part thereof, or any portion of the county, shall not be increased until the board shall have published a notice in a newspaper of general circulation published in the county, of such proposed increase and shall have given the owners of the property affected, or any one representing them, or other citizens of said territory, an opportunity to be heard within 20 days after the date of such publication. The board of assessors, assessor or supervisor of assessments shall have like opportunity to be heard thereon,

except where such action is taken in individual cases upon complaint. The board shall hear any person, upon request, in opposition to a proposed reduction in the assessment of any person, corporation or territory.

(6) The board of review shall hear and determine the application of any person who is assessed on property claimed to be exempt from taxation. If the board shall determine that any such property is not liable to taxation and the question as to the liability of such property to taxation has not previously been judicially determined, the decision of the board shall not be final unless approved by the Department; and it shall be the duty of the clerk of the board in all cases, under the direction of the board, to make out and forward to the Department, a full and complete statement of all the facts in the case. If the Department is satisfied that such property is not legally liable to taxation, it shall notify the board of review of its approval of such decision, and the board shall correct the assessment accordingly. But if the Department is satisfied that such property is liable to taxation, it shall advise the board of its objections to such decision and the assessment upon such property shall not be removed from the assessment list, but the persons making application for such exemption may offer the claim of exemption as a defense in any judicial proceeding for the collection of taxes on such assessment, and, whenever such defense is offered, the question of exemption shall be determined by the judgment or order of the court. In either case, the extension of taxes on any such assessment shall not be delayed by any proceedings under this paragraph, and, in case the property is decided to be exempt, any taxes extended upon such unauthorized assessment shall be abated or, if already paid, shall be refunded.

(7) The board of review shall, at any time before judgment, if an error or mistake is discovered (other than errors of judgment as to the valuation of any real or personal property), in an assessment of any real or personal property belonging to

any person or corporation, issue a certificate setting forth the nature of such error and the cause or causes which operated to produce such error or mistake, to the person or corporation erroneously assessed, which such certificate when properly endorsed by the board of assessors, assessor or supervisor of assessments showing his concurrence therein and not otherwise may be used in evidence in any court of competent jurisdiction, and when so introduced in evidence, such certificate shall become a part of the court records, and shall not be removed from the files except upon the order of the court.

After the board of review has issued a certificate of error and it has been properly endorsed by the board of assessors, assessor or supervisor of assessments, 2 copies of such certificate of error shall be made and one copy given to the county clerk and one copy given to the collector. The county clerk shall keep records of the changes or corrections made in the certificate and shall certify such corrections to the collector so that he can account for the proper amount of taxes chargeable to him. Amended by P. A. 79-1363, § 21, eff. Oct. 1, 1976; P. A. 79-1454, § 56, eff. Aug. 31, 1976.

675. Payment of taxes—Payments under protest] § 194. Except as otherwise provided in Section 224.1 of this Act,[1] current taxes on real property shall be payable in 2 equal installments. The collector, when so requested by the party paying the taxes, shall receive and receipt for such taxes in installments. The collector shall receive taxes on part of any lot, piece or parcel of land charged with taxes when a particular specification of the part is furnished. If the tax on the remainder of such lot or parcel of land remains unpaid, the collector shall enter such specification in his return, so that the part on which the tax remains unpaid may be clearly known. The tax may be paid on an undivided share of real estate. In such case the collector shall designate on his record upon whose undivided share the tax has been paid.

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[1] Chapter 120, § 707.1.

If any person desires to object pursuant to Section 235 of this Act[2] to all or any part of a real property tax for any year, for any reason other than that the real estate is not subject to taxation, he shall first pay all of the tax installments due, and such payment shall be accompanied by a writing, substantially in the following form:

Payment under protest.

Vol. No. ..... Item No. ..... (as the same appear on the General Tax Bill). Original amount of tax $..... Amount of payment $..... This payment shall be applied to the taxes of all taxing bodies ratably, subject to refund of .....% of the tax, which is objected to on the ground (here set forth ground of objection) and is, accordingly, made under protest.

Name of taxpayer.....
Address.....

The person protesting shall present to the collector 2 copies of the written protest signed by himself. The collector shall write or stamp the date of receiving the same upon the copies, and sign the same, one of which copies he shall retain and the other he shall deliver to the person making the payment under protest.

In counties having 1,000,000 or more inhabitants, and in other counties which have adopted the method provided for in Section 224.1, any such written protest, whether of all or any part of a real property tax, shall be presented to the Collector at the time of payment of the second installment of said tax and at no other time.

The person paying real estate taxes under protest shall appear in the next application for judgment and order of sale and object to the taxes in relation to which the protest is made, and upon his failure so to do, the protest shall be waived, and judgment and order of sale entered for any unpaid balance of such taxes.

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[2] Chapter 120, § 716.

When any such objection is filed in a county of fewer than 1,000,000 inhabitants, there shall also be filed a duplicate copy for the use of the State's Attorney and a triplicate copy for the use of the county clerk of such county. Any such objection or amendment thereto filed in a county of fewer than 1,000,000 inhabitants shall contain on the first page thereof a listing of the tax levying units against which the objection is directed. Within 10 days thereafter the clerk of the circuit court shall deliver one copy to the State's Attorney and one copy to the county clerk, taking their receipts therefor. The county clerk shall, within 30 days from the last day for the filing of objections, notify the duly elected or appointed custodian of funds for each tax levying unit, whose tax monies may be affected by such objection, that such objection has been filed. Any amendment filed to such objection, except any amendment permitted to be made in open court during the course of a hearing on such objection, shall likewise be filed in triplicate, with the duplicate copy delivered to the State's Attorney and the triplicate copy delivered to the county clerk by the clerk of the circuit court as hereinabove provided in the case of original objections, and the State's Attorney shall within 10 days of receiving his copy of such amendment notify the duly elected or appointed custodian of funds for each tax levying unit whose tax monies may be affected by such amendment that such amendment has been filed. The State's Attorney shall also notify such custodian and the county clerk in writing of the date, time and place of any hearing before the court to be held upon such objection or amended objection not later than 4 days prior to the hearing thereon. The notices provided herein shall be by letter addressed to such custodian or the county clerk and may be mailed by regular mail, postage prepaid, post-marked within the 30 day period or the 10 day period, as the case may be, but not less than 4 days before a hearing.

In all counties, when the taxpayer appears and filed objection, the court shall, after first determining that due notice, if required, has been given to the tax levying unit, hear and

determine the matter according to the right of the case and enter judgment for any part of the taxes, or order a refund of any part of the taxes, so paid under protest. Appeals shall lie from such orders of the court as in other cases of objection to judgment and order of sale for taxes. Refunds shall be made by the collector in accordance with the final orders of the court, and the amount of such refunds shall be deducted from the taxes of the taxing bodies whose taxes were adjudged illegal, in the same or a subsequent year. Proceedings upon objections filed under this Section are subject to Section 194a.[3]

Where any tax is paid in full and protested as herein provided before the delinquent taxes are transcribed into the tax judgment, sale, redemption and forfeiture record, and the taxpayer appears and files objection, the collector, within such time as may be fixed by the court, shall file a transcript from the tax warrant book showing the tax, and such transcript shall be an amendment to the tax judgment, sale, redemption and forfeiture record, and the case shall proceed as if the tax had been originally transcribed therein.

In the payment of real or personal property taxes or any installment of real property taxes, the collector shall first apply such payments to interest (including interest added upon forfeiture to real property taxes) and costs, and after the payment of interest and costs such payments shall be applied upon the total tax of real or personal property upon which the payments are made.

No protest shall prevent or be a cause of delay in the distribution of tax collections among the taxing bodies of any taxes collected which are not paid under protest. The collector may withhold from distribution the amounts paid under protest or ½% of the total taxes collected, whichever is less. The

[3] Chapter 120, §675a.

collector shall deduct from the taxes of any taxing body for any year the amount of any tax for any year held illegal by the final order of a court, and use the amount deducted to equalize the distribution.
Amended by P.A. 79-350, § 1 eff. Oct. 1, 1975.

716. Proceedings by court—Form of order—Cure of error or informality.] § 235. The court shall examine the list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of the lands or lots, to the entry of judgment against them, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be: Provided, that no person shall be permitted to offer any such defense unless such writing specifying the particular cause of objection shall be accompanied by an official original or duplicate tax collector's receipt, showing that all taxes to which objection is made have been paid under protest pursuant to the provisions of section 194 of this Act; [1] and it shall be the duty of all tax collectors to furnish such duplicate receipt without charge.

If any party objecting to any tax paid under protest is entitled to a refund of the amount, or any part thereof, so paid under protest, the court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot or part of a tract or lot, for each kind of tax or special assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form:

Whereas, due notice has been given of the intended application for a judgment against such lands and lots, and no sufficient defense having been made or cause shown why

[1] Chapter 120, § 675.

judgment should not be entered against such lands and lots, for taxes (special assessments, if any), interest, penalties and costs due and unpaid thereon for the year or years herein set forth, therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract, or tracts, or lots (as the case may be), in favor of the People of the State of Illinois, for the sum annexed to each, being the amount of taxes (and special assessments, if any), interest, penalties and costs due severally thereon; and it is ordered by the court that the said several tracts of lots of land, or so much of each of them as shall be sufficient to satisfy the amount of taxes (and special assessments, if any), interest, penalties and costs annexed to them severally, be sold as the law directs.

The order shall be signed by the judge. In all judicial proceedings of any kind, for the collection of taxes and special assessments, all amendments may be made which, by law, could be made in any personal action pending in such court, and no assessment of property or charge for any of the taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax list without name, or in any other name than that of the rightful owner; and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, not affecting the substantial justice of the tax itself, shall vitiate or in any manner affect the tax or the assessment thereof; and any irregularity or informality in the assessment rolls or tax lists, or in any of the proceedings connected with the assessment or levy of such taxes, or any omission or defective act of any other officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to law by the court, or

by the person (in the presence of the court) from whose neglect or default it was occasioned. Provided, that where separate advertisement and application for judgment and order of sale is made on account of delinquent special taxes or special assessments in all cities, villages and incorporated towns in counties containing a population exceeding 1,000,000 inhabitants by the last preceding census of the United States or of this State, and in cities, villages and incorporated towns in other counties in which the county board by resolution has extended the time in which the return, required in section 209,[2] may be made, the procedure shall in all respects be the same as in this section prescribed, except that there shall be two separate judgments and orders for sale, one on account of delinquent special taxes and special assessments and the other on account of delinquent general taxes.

Amended by P.A. 76-2254, § 1, eff. July 1, 1970.

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[2] Chapter 120, § 690.